



SO ORDERED.

SIGNED this 17 day of January, 2024.

A handwritten signature in blue ink, reading "David M. Warren".

David M. Warren
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
WILMINGTON DIVISION

IN RE:

CASE NO.:

PORT CITY CONTRACTING SERVICES, INC.

22-02917-5-DMW

DEBTOR

CHAPTER 7

MARK EASTHAM and
PETER SPARK,

Plaintiffs,

vs.

ALGERNON L. BUTLER, III,
CHAPTER 7 TRUSTEE FOR
PORT CITY CONTRACTING
SERVICES, INC.,
ROBERT P. SHARPE,
STONE BAY TACTICAL, LLC, and
SRS SUPPLY, LLC,

Defendants,

ADVERSARY PROCEEDING NO.:
23-00089-5-DMW

CONSENT ORDER SUBSTITUTING TRUSTEE AS REAL PARTY IN INTEREST
AND AMENDING CASE CAPTION

THIS MATTER comes before the Court upon the requests and consent of the Plaintiffs Mark Eastham and Peter Spark ("Plaintiffs") and Algernon L. Butler, III, Chapter 7 Trustee for

Port City Contracting Services, Inc. (“Trustee”). The Court makes the following findings of fact and conclusion of law:

1. On or about May 4, 2022 this action was originally commenced by the Plaintiffs’ filing of a complaint with the Superior Court for New Hanover, North Carolina.

2. On December 16, 2022, Port City Contracting Services, Inc. (“PCCS”) filed with the Court a voluntary petition for relief under Chapter 7 of the Bankruptcy Code, and Algernon L. Butler, III was appointed as Chapter 7 Trustee to fulfill the duties set forth in 11 U.S.C. § 704.

3. On March 3, 2023, Robert Paul Sharpe (“Sharpe”) filed with the Court a voluntary petition under Chapter 13 of the Bankruptcy Code.

4. On September 9, 2023 this action was removed to this Court by the filing with the Court on that date of a notice of removal by Sharpe, and upon removal this action was designated Adversary Proceeding No.: 23-00089-5-DMW and was designated to be associated with the Chapter 13 case of Mr. Sharpe.

5. On January 5, 2024, the Chapter 13 case of Sharpe was dismissed by order of this Court.

6. Federal Rule of Civil Procedure 17 requires that actions be prosecuted “in the name of the real party in interest,” Fed. R. Civ. P. 17(a)(1), and permits the real party in interest to be substituted into an action. Fed. R. Civ. P. 17(a)(3). When a petition is filed, the bankruptcy trustee becomes the proper party in interest to pursue any legal or equitable claims that reflect property of the bankruptcy estate.

7. In light of the dismissal of the bankruptcy case of Sharpe, and the continued pendency with this Court of the bankruptcy case of PCCS and the appointment of the Trustee, it would be appropriate to substitute the Trustee as the real party in interest for PCCS and amend

the caption of this action to reflect that substitution and to change the association of this action from the bankruptcy case of Sharpe to the bankruptcy case of PCCS.

8. It appears that some of the issues originally relevant in this action may have been mooted or subsumed by the bankruptcy filing of PCCS, the appointment of the Trustee, and/or the claims allowance process. In addition, the Plaintiff and Trustee have exchanged information and intend to engage in a mediated settlement conference as soon as practicable and in any event within the next 90 days. Accordingly, for these reasons and in the interest of judicial economy, it would be appropriate that this action remain stayed until the conclusion of that conference and until further order of this Court.

THEREFORE, the Court hereby ORDERS as follows:

1. Pursuant to Fed. R. Civ. P. 17, the Trustee is substituted for PCCS as the real party in interest in this action.

2. The caption of this action is amended as set forth above to reflect that substitution and to change the association of this action from the bankruptcy case of Sharpe to the bankruptcy case of PCCS.

3. The entry of this order shall not prejudice the rights of any party, including any right to request the remand of this case to state court.

4. This action shall be stayed until the conclusion of a mediated settlement conference and until further order of this Court.

IN CONSENT:

/s/ Richard P. Cook

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